

# 2011 Biennial Report

Kentucky Office of the Attorney General



# Letter from Attorney General Conway

Dear Governor Beshear,

I am pleased to present to you, the legislature, and my fellow Kentuckians, the following report of the Office of the Attorney General's many accomplishments for the biennium July 1, 2009 to June 30, 2011.

My service as the 49th Attorney General for the Commonwealth of Kentucky has been the most rewarding and challenging of my professional life. We have accomplished a great deal this biennium, despite unprecedented budget cuts. We have not only maintained the mission critical functions of this office, but we have implemented many new initiatives that reflect my commitment to standing up for Kentucky families.



During this biennium, my Cybercrimes Unit seized more than 247,000 child porn images and videos from the Internet, opened 152 new cases and examined more than 3,600 removable devices and hard drives. We are making the Internet a safer place for Kentucky kids and assisting local law enforcement in processing vital digital and computer evidence, decreasing the backlog of evidence.

By partnering with other law enforcement agencies, I created Kentucky's first and only statewide Prescription Drug Diversion Task Force to combat overprescribing physicians, prescription pill trafficking, and doctor shopping. And through my Keep Kentucky Kids Safe public awareness program, we've alerted thousands of middle and high school students across Kentucky to the dangers of abusing prescription pills. I want to make sure we don't lose another generation of kids to prescription pill abuse.

As the state's chief consumer protection advocate, I felt it was my duty to look into the questionable business practices of some of Kentucky's for-profit colleges. My investigation focuses on student-loan default rates, high-pressure recruitment practices, job-placement claims and the transferability of credits at seven proprietary schools in the Commonwealth. This is an issue I am deeply troubled by and one that affects the hopes and dreams of Kentuckians trying to make a better life for themselves and their families.

We have also successfully implemented eWarrants in nearly all of Kentucky's rural counties to address the backlog of un-served warrants and make our streets safer. Medicaid Fraud collections have more than doubled this biennium and my Office of Rate Intervention has helped consumers avoid more than \$237 million in proposed utility rate increases.

I am proud of all that we have accomplished during this biennium and I am grateful for the opportunity to serve my fellow Kentuckians for another term as Attorney General. I look forward to our continued work together to make Kentucky a safer place to live, work and raise a family.

A handwritten signature of Jack Conway in black ink. The signature is stylized, with the first name 'Jack' being more prominent and the last name 'Conway' written in a cursive script.

# Table of Contents

<b>Biennial Accomplishments at a Glance .....</b>	<b>2</b>
<b>Senior Staff .....</b>	<b>4</b>
<b>Office of Consumer Protection .....</b>	<b>6</b>
Combating Abuse in the For-Profit College Industry	6
Agreement Reached with Student Loan Xpress	6
Topix	7
Alerting Kentuckians to Online Scam Artists, Predators	7
Attorney General Conway Launches KY Kids Alert Initiative	7
Other Biennial Highlights	8
<b>Office of Civil &amp; Environmental Law .....</b>	<b>9</b>
Litigation Branch, Boards & Agencies	9
Environmental Branch	9
Protecting Charitable Assets & Vulnerable Clients of Nonprofits	10
Enforcing the Tobacco Master Settlement Agreement	10
<b>Medicaid Fraud &amp; Abuse Control .....</b>	<b>12</b>
Investigating Drug Companies that Defraud Medicaid & Consumers	12
Fighting Neglect and Abuse	12
Other Biennial Accomplishments	13
<b>Office of Rate Intervention .....</b>	<b>14</b>
Fighting for Ratepayers	14
Protecting Kentucky from Overreaching EPA Regulations	15
<b>Opinions Branch .....</b>	<b>16</b>
Open Records and Open Meetings Dispute Resolution	16
Biennial Accomplishments	16
<b>Administrative Hearings Branch .....</b>	<b>17</b>
<b>Uninsured Employers Fund .....</b>	<b>18</b>
<b>Department of Criminal Investigations .....</b>	<b>19</b>
Cybercrimes Branch	19
Drug Investigations Branch	20
AG Conway Launches Statewide Prescription Drug Task Force	20
Keep Kentucky Kids Safe	21
Public Integrity/Special Investigations Branch	22
Cases of Interest	22
<b>Office of Special Prosecutions .....</b>	<b>23</b>
Combating Election Fraud and Public Corruption	23
Notable Cases	24
<b>Office of Victims Advocacy .....</b>	<b>25</b>
Training and Continuing Education	25
Giving a Voice to Kentucky's Crime Victims	25
Preventing Child Sexual Abuse	26
New "I Care About Kids" License Plate	26
<b>Office of Criminal Appeals .....</b>	<b>27</b>
Criminal Appeals Biennial Stats	27
Biennial Accomplishments/Case Highlights	27
Presentations and Trainings by Criminal Appeals Director/Staff	28
<b>Prosecutors Advisory Council .....</b>	<b>29</b>
Biennial Achievements	29
Protecting Public Safety	30
<b>Attorney General Conway Brings eWarrants to Kentucky's Rural Counties .....</b>	<b>31</b>
<b>Office of Administrative Services .....</b>	<b>32</b>
<b>In Memoriam .....</b>	<b>33</b>

# Biennial Accomplishments at a Glance

Even facing a budget cut of more than 30 percent, Attorney General Jack Conway and the Office of the Attorney General have worked diligently to make Kentucky a safer place to live, work and raise a family. The following are highlights of the many accomplishments during this biennium.

## Cybercrimes & Cybersafety

- ▲ Cybercrimes Unit seized more than 247,000 child porn images and videos from the Internet.
- ▲ Opened 152 child porn investigations and examined more than 3,600 hard drives and removable devices
- ▲ Trained more than 2,400 law enforcement officers and prosecutors on latest techniques in fighting cybercrimes and digital evidence collection.



## Drug Diversion

- ▲ Created Kentucky's first statewide prescription drug abuse task force to focus on investigations into doctor shopping, drug trafficking, overprescribing physicians and illegal out-of-state pharmacies.
- ▲ Participated in Operation Flamingo Road, Kentucky's largest prescription drug bust.
- ▲ 146 drug investigation cases opened
- ▲ Launched Keep Kentucky Kids Safe — a statewide prescription drug abuse prevention and awareness program. It alerts middle and high school students to the dangers of abusing prescription pills.



## Consumer Protection

- ▲ Launched investigation into the questionable business practices of some of Kentucky's for-profit colleges.
- ▲ Reached agreement with Student Loan Xpress for \$3.6 million in loan reductions for students of now defunct American Justice School of Law in Paducah.
- ▲ Handled more than 49,000 consumer complaints and inquiries.
- ▲ Led nationwide effort to stop abuses on Topix.com and reached agreement to end \$19.99 fee for priority review of abusive or inappropriate posts.



## Medicaid Fraud & Abuse

- ▲ Doubled Medicaid fraud recoveries.
- ▲ Recovered or was awarded more than \$116 million in state and federal dollars.



- ▲ Tripled elder abuse investigations.
- ▲ Initiated more abuse & neglect prosecutions than any previous Attorney General

## Rate Intervention

- ▲ Saved Kentucky consumers more than \$237 million in proposed utility rate increases.



## Other Accomplishments

- ▲ Utilizing an ARRA grant, funded implementation of eWarrants in 68 of Kentucky's rural counties during the biennial period. Subsequent to the biennial, General Conway's office successfully implemented eWarrants in 99 rural counties, bringing the total number of Kentucky counties utilizing eWarrants to 115.
- ▲ With state and federal partners, launched KY Kids Alert program to alert Kentucky parents and childcare providers about important child product recalls. Approximately 3,000 Kentucky childcare centers and family childcare homes now receive safety recall alert information.



# Senior Staff

Attorney General Jack Conway has assembled a distinguished team of senior staff. All are well-respected in their fields and committed to serving the people of Kentucky.

## Patrick Hughes, Deputy Attorney General

General Conway announced the appointment of Patrick Hughes as his Chief Deputy Attorney General in May of 2011. The top appointed position in the Office of the Attorney General, Hughes advises General Conway on matters of policy, legislation and the budget and oversees the day-to-day operations of the office.

Hughes joined the Attorney General's office from Dressman, Benzinger, Lavelle PSC where he was a partner in the law firm. He is also a veteran of state government, having served as an attorney in the Department of Financial Institutions and as a senior staff member in the Finance and Administration Cabinet from 1995 to 1997 during the administrations of Gov. Brereton Jones and Gov. Paul Patton.



Hughes is a graduate of the University Of Cincinnati College Of Business and received his law degree from the University of Kentucky.

## Mitchel Denham, Assistant Deputy Attorney General

Attorney General Conway appointed Mitchel Denham Assistant Deputy Attorney General overseeing the criminal divisions of the Office of the Attorney General in May of 2011. In this role, Denham manages numerous divisions within the office; including Criminal Appeals, Special Prosecutions, Victims Advocacy, the Department of Criminal Investigations and the Office of Medicaid Fraud and Abuse Control.

Prior to his appointment as an Assistant Deputy, Denham served as the Executive Director of the Attorney General's Office of Medicaid Fraud & Abuse Control where, in addition to his duties as director, he took an active role in the investigation and prosecution of fraud and elder abuse cases.



Prior to his service at the Attorney General's Office, Denham worked as a staff attorney for Jefferson Circuit Court, Div. 9 and served as an Assistant Commonwealth's Attorney in Jefferson County. Denham is a graduate of Centre College in Danville, Ky. where he received his B.S. in Economics. He graduated from the University Of Kentucky College Of Law in 2003.



## Dana Cox Nickles, Assistant Deputy Attorney General

Dana Cox Nickles was appointed Assistant Deputy Attorney General-overseeing the civil division of the Attorney General's Office in March of 2011. In this role, Nickles manages the operations of three divisions within the office; including Consumer Protection, Rate Intervention, and Civil and Environmental Law.

Nickles is a veteran of state government, having served as General Counsel for the Kentucky Executive Branch Ethics Commission, Deputy General Counsel for the Kentucky Administrative Office of the Courts, and Personnel Attorney for the Kentucky Transportation Cabinet. She also served as Deputy Bar Counsel/Case Manager for the Kentucky Bar Association and worked in private practice.

Nickles is a graduate of Salmon P. Chase College of Law.



## Allison Gardner Martin, Assistant Deputy Attorney General & Communications Director



Allison Gardner Martin is the Assistant Deputy Attorney General for Administration-overseeing the daily operations of the front office and Administrative Services. She also continues to serve as General Conway's Communications Director.

Prior to joining the Attorney General's staff in 2008, Martin served as Deputy Communications Director for Louisville Metro Mayor Jerry Abramson. She also worked as a television reporter and anchor for WBKO-TV in Bowling Green and WLKY-TV in Louisville.

Martin, a native of Barren County, received her journalism degree from Northwestern University in Evanston, IL. She lives in Louisville with her husband and two children.



# Office of Consumer Protection

The Office of Consumer Protection enforces the Kentucky Consumer Protection Act to safeguard the state's consumers and combat unethical business practices. The office also counsels consumers regarding inquiries and complaints, issues consumer alerts and delivers consumer education presentations across the Commonwealth on issues such as Cybersafety, preventing identity theft and how seniors can avoid becoming victims of scams.

During this biennium, the Consumer Protection Division handled more than 49,000 consumer complaints and inquiries on everything from possible price-gouging at the pumps to scams that target Kentucky consumers. Attorney General Conway is pleased to report that his Consumer Protection Division recovered more than \$7.3 million for the state's consumers and taxpayers through dispute resolution services and litigation. Of this amount, consumers received more than \$5 million in restitution; \$1.3 million was recovered for the state's General Fund and nearly \$1 million was collected for litigation costs and civil penalties.

## Combating Abuse in the For-Profit College Industry

In 2010, Attorney General Conway launched an investigation into the questionable business practices of some of the for-profit colleges operating in Kentucky. General Conway's Office of Consumer Protection has issued civil subpoenas to a total of seven schools soliciting information on their student-loan default rates, advertising claims to prospective students, student recruitment practices, job-placement claims and the transferability of credits. The investigation will determine if the schools violated Kentucky's Consumer Protection Act or other state laws.

Attorney General Conway is also leading a national bipartisan effort, which now includes 22 states, to examine potential abuses within the industry.

Subsequent to the biennial period, Attorney General Conway filed consumer protection lawsuits against two proprietary schools including Daymar College and National College.



## Agreement Reached with Student Loan Xpress

Attorney General Conway began taking a look at the for-profit college industry after reviewing information gathered in investigations of Decker College in 2008 and the American Justice School of Law in Paducah in 2010.



In September of 2010, General Conway and his Office of Consumer Protection announced an agreement with Student Loan Xpress, Inc. (SLX) that resulted in \$3.6 million in loan reductions for students of the now defunct American Justice School of Law in Paducah. The loan reduction per student ranged from just under \$1,000 to as much as \$75,000.



The Attorney General's office obtained the settlement with SLX after alleging multiple misrepresentations in the company's marketing materials and loan application instructions. The investigation also revealed that the borrowers' promissory notes did not contain disclosures required by the Federal Trade Commission.

## Topix

Responding to the concerns of parents, school officials and community leaders across Kentucky, Attorney General Conway led a nationwide effort to stop abuses on the popular Internet message board website Topix.com. With the support of 34 attorneys general, an agreement was reached with Topix to eliminate the website's \$19.99 fee for "priority review" of abusive or inappropriate posts.

As a result of General Conway's efforts, all reports of abuse on Topix.com are reviewed and removed free of charge. Inappropriate posts that aren't removed from Topix in a timely fashion can be reported to [topixcomplaints@ag.ky.gov](mailto:topixcomplaints@ag.ky.gov).



## Alerting Kentuckians to Online Scam Artists, Predators



The Consumer Protection Office conducts extensive education programs across Kentucky designed to help consumers protect themselves in the marketplace and avoid falling victim to con artists. More than 30,000 Kentuckians have benefited from these programs, which include Senior Crime Colleges, Cybersafety programs and identity theft prevention presentations.

During this biennium, Attorney General Conway continued his commitment to educating Kentucky kids and their parents about the dangers that exist online. General Conway and his staff presented 199 cybersafety programs during the biennium, reaching nearly 37,000 people in Kentucky.

The Attorney General's Office also partnered with the City of Louisville and the Better Business Bureau of Central and Eastern Kentucky to host free shred days in Louisville and Lexington to help consumers combat identity theft, one of the fastest-growing crimes in America. With the assistance of Shred-All Documents, more than 9,200 lbs of personal documents were shredded on Sept. 24, 2010.

## Attorney General Conway Launches KY Kids Alert Initiative

In partnership with the Kentucky Cabinet for Health and Family Services and the U.S. Consumer Product Safety Commission, Attorney General Conway launched a new statewide initiative to educate Kentucky parents and childcare providers about the importance of child product recall information. The KY Kids Alert program also helps ensure that childcare facilities across the Commonwealth receive these potentially lifesaving notices.

Nearly 3,000 Kentucky childcare centers and certified family childcare homes now receive child product recall alerts because of the KY Kids Alert program. Additionally, more than 15,000 KY Kids Alert bookmarks were distributed to local health departments, childcare trainers, childcare facility inspectors, school resource centers and local public libraries in Kentucky.



## Other Biennial Highlights

### Mortgage Foreclosure Meltdown



Attorney General Conway has worked closely with fellow attorneys general as part of bipartisan group to address the questionable foreclosure practices by some of the nation's largest banks. The group has looked into allegations of rampant "robo-signing" by bank employees using fake signatures, fake mortgage assignments and affidavits that were not properly notarized to push through un-reviewed and unauthorized foreclosure documents.

### Price-Gouging Case Update

Protecting Kentucky's Price-Gouging Statute in October of 2009, Attorney General Conway announced a significant ruling in a lawsuit filed by the Attorney General's Office against Marathon Petroleum Company LLC, Marathon Oil Corp. and Speedway alleging price gouging in the wake Hurricanes Katrina and Rita. Franklin Circuit Judge Thomas Wingate upheld the constitutionality of the state's price-gouging law and dismissed three counterclaims filed by the defendants that alleged the law was vague and violated the separation of powers and due process clauses. Attorney General Conway called the ruling, "an important victory for Kentucky consumers."

The Office of the Attorney General is seeking \$89 million in damages plus penalties from Marathon and Speedway SuperAmerica for alleged price-gouging violations.



Attorney General Conway argues Marathon price-gouging case in Franklin Circuit Court.



# Office of Civil & Environmental Law

The Office of Civil & Environmental Law oversees a number of branches, including Administrative Hearings, Uninsured Employers' Fund, Opinions, Boards & Agencies, Environmental and Litigation. These branches have a wide scope of duties from enforcement of the Tobacco Master Settlement Agreement (MSA) to providing general counsel services to state boards.

## Litigation Branch, Boards & Agencies

The Office of the Attorney General's Litigation Branch provides legal representation to state agencies, boards, officers and employees in administrative hearings, trial courts and appellate courts, at both the state and federal level. The branch frequently represents state agencies in front of the Personnel Board, the Board of Claims and in administrative appeals of agency actions. It also provides representation to state officers and employees who are sued for work-related conduct in either their official or individual capacities for civil damages or declaratory or injunctive relief. The branch also files civil suits on behalf of state agencies seeking monetary or equitable relief against private parties.



During the time period of July 1, 2009, through June 30, 2011, the litigation branch received 952 new cases from 19 agencies. The total number of active civil litigation cases at the end of the biennium was 1,243.

In addition to providing representation to state agencies, officers and employees, the Attorney General, at his discretion, intervenes in civil actions when challenges to the constitutionality of statutes and regulations are raised by parties who are required to notify the Attorney General when they raise such challenges. The office also initiates ouster actions against state and municipal officers who are not eligible to serve in the offices they hold.

The Boards and Agencies Branch currently represents 41 independent licensure boards and provides general counsel services, as well as prosecution of administrative actions, before the boards.

## Environmental Branch

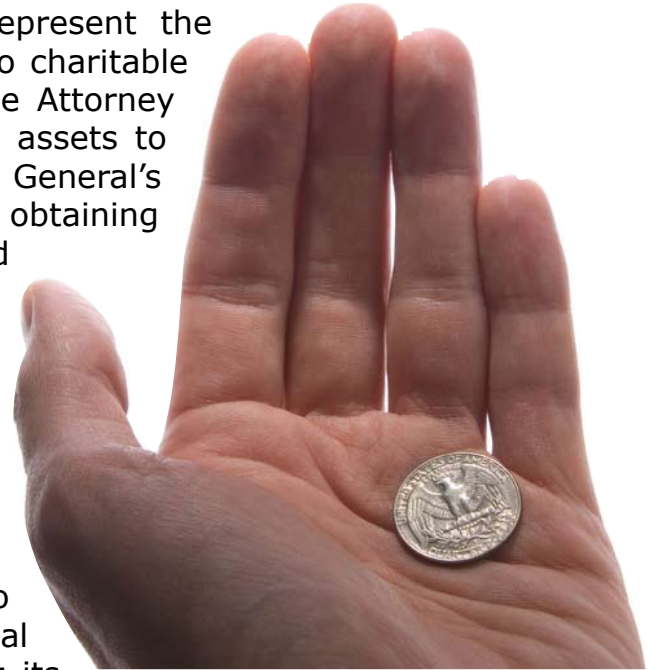
The Attorney General has authority under KRS Chapters 15 & 224 to prosecute environmental crimes and carry out civil enforcement of air and water quality statutes. This branch represents the Attorney General on the Environmental Crimes Workgroup, which consists of other state agencies, the U.S. Environmental Protection Agency (EPA), and the U.S. Attorney's Office to review, discuss and make recommendations concerning environmentally related cases. The branch also serves as the Department of Fish & Wildlife representative on the Association of Fish and Wildlife Agencies national and regional Legal and Endangered Species Committees.



## Protecting Charitable Assets & Vulnerable Clients of Nonprofits

The Office of the Attorney General continues to represent the interest of the Commonwealth in matters pertaining to charitable trusts and funds held by charitable organizations. The Attorney General's primary role remains supervising charitable assets to prevent or remedy their misapplication. The Attorney General's role, however, also includes assisting charitable trusts in obtaining the most favorable tax benefits available under law and assisting in the modification and reform of charitable trusts and nonprofit funds to best meet the purposes of their dedication.

On June 9, 2011, General Conway's office filed a civil action in Letcher County placing Golden Years Rest Home, Inc. into receivership for the purpose of involuntarily dissolving the nonprofit corporation. The Attorney General is assigned the responsibility to involuntarily dissolve a nonprofit that becomes detrimental to the interest and welfare of the Commonwealth or its citizens. Golden Years Rest Home, in Jenkins, Ky., had a history of non-compliance with state and federal laws. Despite exhaustive efforts by the Attorney General's office to restore financial stability to Golden Years, the personal care home was closed and its residents moved to alternate facilities subsequent to this biennial period.



## Enforcing the Tobacco Master Settlement Agreement

2011 marked the twelfth full year since the signing of the landmark Master Settlement Agreement (MSA). This historic agreement between 52 states and territories and the major cigarette companies has resulted in payments of more than \$1.3 billion to the Commonwealth since 1999. In addition to the payments, the MSA has also helped to reduce underage smoking through marketing restrictions and creation of the American Legacy Foundation, an organization dedicated to developing programs that address the health effects of tobacco use, especially among youth.



Kentucky's participation in the MSA, which results in more than \$100 million in payments by the participating tobacco companies to the Commonwealth each year, has required the OAG to devote substantial resources and effort. Not only must the MSA itself be continually monitored and enforced, in terms of both payments and injunctive relief, but the Non-Participating Manufacturer (NPM) escrow statute, which was passed in 2000 and added to in 2003, 2004 and 2009, must be diligently enforced. This prevents Kentucky from losing a percentage of its MSA payments each year under the NPM adjustment.

The OAG has the responsibility of defending actions challenging the MSA in both state and federal courts throughout the country. This complex litigation has included claims that the MSA violates the Kentucky and United States constitutions and various antitrust statutes. The OAG works closely with other states and the National Association of Attorneys General on these cases, as well as on enforcement of the MSA terms and conditions.



The Office administers the MSA Compliance Advisory Board established by KRS 15.300, which meets quarterly to monitor MSA enforcement actions. Kentucky has also entered into agreements with 10 national retail chains, including Wal-Mart and several major drug store and gasoline corporations, in which these outlets agree to procedures designed to keep cigarettes from being sold to minors. Through these efforts, the historic marketing terms of the MSA which protect minors from many forms of tobacco advertising to lower youth smoking are enforced.

Under "Phase I" of the MSA, Kentucky has received more than \$1.3 billion since the initial payment in December 1999. These payments are scheduled to continue annually in perpetuity and it is believed that, for the near future, approximately \$100 million will be paid each year to the Commonwealth. An additional \$600 million was received by Kentucky tobacco growers under "Phase II," the Tobacco Growers Trust Agreement, which was created as a result of an MSA provision to address affected tobacco-growing communities in 14 states.

Furthermore, in civil actions against non-participating companies, the OAG has obtained \$1.6 million in fines and costs for violations of the escrow statute.



# Medicaid Fraud & Abuse Control

The Office of Medicaid Fraud and Abuse Control investigates and prosecutes fraud perpetrated on Kentucky's Medicaid Program by Medicaid providers and pharmaceutical companies. The office also investigates, prosecutes, and refers for prosecution allegations of abuse, neglect, or exploitation of vulnerable citizens in Medicaid-funded facilities.

Attorney General Conway is pleased to report that Medicaid Fraud recoveries have more than doubled during this biennium. General Conway's Medicaid Fraud Division has recovered or been awarded more than \$116 million in state and federal dollars. These cases range from lawsuits and settlements against pharmaceutical companies to cases against individual providers. Additionally, 33 criminal charges were filed for abuse, neglect, fraud and related charges.



## Investigating Drug Companies that Defraud Medicaid & Consumers

The Attorney General's Medicaid Fraud Unit has recovered tens of millions of dollars for the Medicaid Program and for Kentucky taxpayers through its aggressive litigation of Average Wholesale Price (AWP) cases.

The office filed suit against 47 of the nation's biggest pharmaceutical manufacturers, alleging they defrauded the Medicaid Program and consumers by publishing inflated Average Wholesale Prices (AWPs), which did not bear any relationship to the drug prices the companies actually charged customers.

Three out of the four trials in this litigation have resulted in multi-million dollar settlements and or verdicts including:

- ▲ AstraZeneca — \$20.5M jury verdict

Approximately 22 of the AWP cases have been settled including:

- ▲ Teva Pharmaceuticals — \$10M
- ▲ GlaxoSmithKline (GSK) — \$3.7M
- ▲ Mylan — \$6.5M

### Biennium Results

- ▲ 33 charges
- ▲ 31 convictions
- ▲ 47 total settlements

Recovered or awarded a total of \$116,177,812.48 in state and federal dollars.

Additionally, General Conway's Medicaid Fraud Division successfully defended an effort by AstraZeneca to overturn a \$20.5 million verdict and judgment against the drug maker for inflating the average wholesale prices of their prescription drugs. Franklin Circuit Court Judge Philip Shepherd denied AstraZeneca's motion for a new trial and other post-judgment motions. In October of 2009, a jury handed down a \$14.7 million verdict against the drug company. Civil penalties awarded in the case totaled \$5.3 million.



## Fighting Neglect and Abuse

Attorney General Conway has sent a clear message that the abuse and neglect of elderly and vulnerable citizens is not tolerated in Kentucky. Elder abuse investigations have tripled under General Conway's watch. General Conway has initiated more abuse and neglect cases than any previous Attorney General. In addition to investigating and prosecuting abuse and neglect cases, the Attorney General's office educates and trains members of the public and local law enforcement agencies in detecting, reporting, and investigating abuse and neglect of vulnerable adults.

- ▲ An Attorney General's investigation resulted in the arrest and indictment of the former director of Golden Years Rest Home in April of 2010 on a 74-count indictment. Subsequent to this biennium, James F. "Chum" Tackett, pled guilty to stealing more than \$300,000 in funds that were to be used for the care of the residents of Golden Years. He faces up to 10 years in prison on the state charges.
- ▲ A supervisor at Community Presence in Carter County was sentenced to nine years in prison in May of 2011 in connection with the abuse of three mentally handicapped patients. General Conway's Medicaid Fraud and Abuse Control investigators worked with Grayson Police to investigate the charges against Robert Thompson of Ironton, Ohio. On one occasion, Thompson and a co-defendant illegally restrained a Community Presence resident by lying on his back and chest over the course of an hour-and-a-half, putting him at risk of serious injury or death.



The office also operates the elder abuse tip line, which citizens can call at **877-ABUSE-TIP** (877-228-7384). The abuse tip line received 42 calls this biennium.

## Other Biennial Accomplishments

- ▲ Initiated an investigation into the management of **Passport** and the transfers of money from the entity to the physician and hospital partners in response to Auditor Crit Luallen's November 2010 audit of Passport. The investigation focused on three distributions totaling \$30.5 million from Passport into the bank accounts of its investor-members. Subsequent to this biennium, General Conway's office obtained a \$26.4 million settlement with the hospital and physician partners of Passport.
- ▲ Launched a nine-month investigation into the fraudulent reporting of cervical cancer screenings by **AmeriHealth Mercy**, a third-party administrator for the Passport Health Plan. The Attorney General's investigation resulted in AmeriHealth repaying more than \$2 million in damages to the Kentucky Medicaid program. The more than \$2 million constituted treble damages, or triple the amount of the actual damages.
- ▲ Intervened in two whistleblower lawsuits against drug manufacturer **Wyeth**, alleging the company knowingly failed to report certain discounted prices of its drugs as required by law. The suit, which is still pending, seeks damages from Wyeth on behalf of Kentucky's Medicaid program.
- ▲ Filed suit against drug manufacturer **Johnson & Johnson** and two of its subsidiaries alleging they gave kickbacks to Omnicare for use of the Johnson & Johnson manufactured drug Risperdal in its nursing homes.



# Office of Rate Intervention

The Office of Rate Intervention (ORI) serves as a watchdog for consumers in matters relating to natural gas, water, sewer, electric, telephone and health insurance rates.

The majority of the unit's activity is through participation in filings before the Kentucky Public Service Commission (PSC). ORI has been involved with cases relating to health insurance rates before the Kentucky Department of Insurance since 1996. The Attorney General intervenes in matters to represent the interests of all of Kentucky's customers.

ORI is also involved in energy-related matters, including propane complaints and the analysis of the impact of federal regulations on the energy industry. Additionally, the office represents the state's interest in the oversight of the assets of nonprofit corporations.



## Fighting for Ratepayers

### Protecting Least-Cost Power Generation

Since July 1, 2009, ORI has helped Kentucky consumers avoid more than \$237.4 million in proposed utility rate increases. This does not include a myriad of customer complaints where ORI was able to help citizens on specific billing and service issues including, but not limited to, telephone and propane matters.

- ▲ ORI intervened in applications by industry-owned utilities, E.ON (then parent company for Louisville Gas & Electric and Kentucky Utilities Co.) and American Electric Power, Inc. (parent company of Kentucky Power Co.), for contracts to purchase electricity from wind generation facilities in other states. After hearing evidence from ORI, the PSC denied the contracts, because they did not represent the least-cost option for power generation as required by statute. While the Attorney General recognizes the potential value of renewable energy as part of any utility's generation portfolio, neither Kentucky state law or public policy support electric generation that is excessively costly.
- ▲ Rate Payer Savings: Together, ORI's action in these cases contributed to nearly \$142 million in net present value savings for customers.
- ▲ ORI intervened in the application by E.ON to sell its holdings to Pennsylvania Power and Light, Inc. (PPL). The Attorney General's vigorous representation of ratepayers during the merger case resulted in several benefits for the customers:
  - ▶ Two-year "stay out" in which neither LG&E or KU could request increases in general rates.
  - ▶ A cost savings sharing mechanism in which the two utility companies would share any savings with its consumers if a certain threshold is met.
  - ▶ Companies will continue to work on demand side management programs as well as work with low-income customers.
  - ▶ Companies' respective headquarters must remain in their current locations.



- ▲ General Conway's ORI negotiated a settlement with Duke Energy of Kentucky and Progress Energy to protect ratepayers after Duke Energy announced in January of 2011 its proposed purchase of Progress. The settlement reached reflected the Attorney General's hard fought efforts to protect Kentucky ratepayers as well as to provide assistance to low-income families. The concessions and commitments obtained by General Conway's ORI included:
  - ▶ A two-year freeze on any base rate increases for gas and electric service.
  - ▶ A more than \$500,000 company contribution to weatherize low-income homes.
  - ▶ A \$250,000 economic development contribution from Duke Energy to benefit Northern Kentucky.

The Kentucky Public Service Commission approved the settlement between the Attorney General's Office, Duke Energy of Kentucky and Progress Energy on August 2, 2011, subsequent to this biennial period.

### Advocating for Least-Cost, Efficient Water

On July 26, 2010, the Franklin Circuit Court entered an Opinion and Order upholding the PSC's issuance of a certificate of convenience and necessity authorizing Kentucky-American Water Company's (KAWC) construction of a water treatment facility and related transmission facilities for serving Central Kentucky's water supply needs. The Attorney General's office has been active in this matter since 1992, when it asked the PSC to investigate KAWC's sources of supply and future demands. The project that was authorized is consistent with General Conway's advocacy for the lowest-cost solution to KAWC's needs and also consistent with his advocacy for Kentucky-American to improve the efficiency of its operations. An appeal of this action is presently pending before the Kentucky Court of Appeals.

## Protecting Kentucky from Overreaching EPA Regulations

Attorney General Conway has been vigilant in his efforts to protect Kentucky's economy, the coal industry and consumers from overreaching EPA regulations.

- ▲ Among 18 attorneys general to object to proposed Utility MACT rule over concerns about its impact on state economies, jobs and electricity rates.
- ▲ Expressed concern to EPA administrator in 2009 over EPA's attempt to reclassify coal ash as a hazardous waste due to cost to Kentucky taxpayers.
- ▲ In March 2010, filed suit, along with other AGs, to challenge EPA's attempt to regulate carbon dioxide as a greenhouse gas as it would adversely affect Kentucky's coal industry and economy.



# Opinions Branch

## Open Records and Open Meetings Dispute Resolution

Attorney General Conway has promoted both public awareness and public agency compliance of the Kentucky Open Records and Open Meetings Acts. His office participated in continuing education programs, revised and distributed publications dealing with these topics and maintained a website on which open records and open meetings decisions are posted and regularly accessed.

The Attorney General and his staff partnered with the University of Kentucky's Scripps Howard First Amendment Foundation in the development and production of an open records and open meetings training video for public officials. Funded through a grant obtained by the Foundation, the video is intended to provide state and local officials with a better understanding of, and appreciation for, these laws in a user-friendly medium. The Attorney General subsequently partnered with the foundation to produce an open records and open meetings training video for members of the public wishing to use the laws to obtain public records or attend public meetings. The video, which is still in development, is also funded through a grant obtained by the foundation.



## Biennial Accomplishments

The Attorney General issued 469 open records and open meetings decisions in this biennium and facilitated the resolution of an additional 156 disputes. Noteworthy decisions issued by the Attorney General under the provisions of KRS 61.880 include:

- ▲ Declaring that Passport Health Plan is a public agency and its records are public insofar as they relate to the expenditure of state funds.
- ▲ Requiring the Lexington-Fayette Urban County Airport Board to disclose the identity of a payee on a \$10,000 check.
- ▲ Determining that Kentucky Retirement Systems improperly withheld payroll records for its current employees.
- ▲ Requiring the Kentucky League of Cities to release attorney billing records notwithstanding KLC's claim that disclosure would provide an unfair advantage to its competitors.
- ▲ Declaring that Kentucky Consumer Advocate Network is a public agency because it receives federal block grant funds allocated to the state, deposited into the Treasury, and appropriated to it by the General Assembly.

In each of these decisions, Attorney General Conway demonstrated his commitment to open and transparent government by upholding the intent of Kentucky's Open Records Act (KRS 61.870-61.884).



# Administrative Hearings Branch

The Office of the Attorney General has provided hearing officer services to various boards and agencies of the Commonwealth since the 1980s. The General Assembly expanded and centralized this work in 1994 with the creation of the Division of Administrative Hearings and the legislature's enactment of the Administrative Hearings Act, KRS Chapter 13B, which took effect in July of 1996. The division is charged with implementing KRS Chapter 13B. Due to reorganization of the Attorney General's office in 2008, the Division of Administrative Hearings became a Branch of the Office of Civil and Environmental Law.

## Biennial Accomplishments

From July 1, 2009 through June 30, 2011:

**Agency Hearing Requests..... 705**

**Mediation Requests ..... 24**

**State Police Trial Requests ..... 1**

**Hearing Officer Billings..... \$645,593.75**

**Income from trainings..... \$43,260.79**

The Administrative Hearings Branch is assigned several areas of responsibility per KRS 15.111:

- ▲ To maintain a pool of hearing officers, with the necessary support staff, for conducting administrative hearings for government boards and agencies.
- ▲ To provide training in administrative hearing procedures for hearing officers, either by developing and offering the training; by contracting with appropriate organizations for the provision of training; or by approving training which has been developed and submitted by the agencies.

The Branch, which consists of three hearing officers and two administrative specialists, currently provides hearing officer services for more than 55 government agencies and boards. These services include conducting prehearing conferences, ruling on motions, conducting hearings, and writing findings of fact, conclusions of law, and recommended or final orders. The Branch's hearing officers have received specialized training in handling all aspects of administrative hearings.

The Branch provides mediation services to government boards and agencies, recognizing that some cases can be more effectively resolved through mediation. The Branch's mediators are hearing officers who have received specialized training in mediation.

Administrative Hearings conducts an annual hearing officer and administrative law training seminar. For this biennial period, the Branch had more than 320 participants in its training seminars. The annual Branch Seminar is recognized as one of the best seminars on administrative law and hearing officer training. Additionally, the Branch approves agency training programs for hearing officer training.

The Administrative Hearings Branch provides its hearing officer and mediator services to government boards and agencies upon request. If you are part of a government board or agency and you are interested in obtaining these services from the Branch, or you would like more information regarding these services, you may contact Peggy Riddle, the docket clerk for the Branch, at **502-696-5436**. If you are a private citizen and you believe that you are entitled to an administrative hearing, you should contact the government agency or board involved; only that government agency or board can respond to your request for a hearing.

# Uninsured Employers Fund

The Uninsured Employers Fund (UEF) investigates reviews and litigates, on a statewide basis, Kentucky workers' compensation cases in which the employer has failed to obtain required insurance coverage. The fund is a division of the Office of Civil & Environmental Law and is authorized by KRS 342.760.

Although the Department of Labor is charged with the fiscal management of the fund, KRS 342.760 (5) directs members of the Attorney General's Office to represent the fund in all claims made against it or on its behalf. All expenses necessary to represent the fund, including salaries, are borne by the fund. Significantly, the money and/or securities held in trust for the fund by the Department of Labor, "shall not be considered a part of the general funds of the state." All amounts collected as fines or penalties under Kentucky's worker's compensation statute are to be paid into the fund.



The Uninsured Employers' Fund is automatically made a party to workers' compensation claims filed against employers with no insurance coverage on file with the Department of Workers' Claims. The fund's investigation sometimes reveals a simple clerical error that is easily corrected; however, more often than not, the fund's attorneys have to find and join additional defendants with insurance. Kentucky worker's compensation law has a provision for "up-the-ladder" liability (KRS 342.610), whereby general contractors are responsible for any worker's compensation benefits owed to the injured employee of an uninsured subcontractor.

In instances where no "up-the-ladder" liability can be established, the Uninsured Employers' Fund defends itself as if the injured worker was its employee. The fund conducts discovery, presents evidence, attends hearings and works to resolve the claim in a manner that best preserves its assets. If the claim is legitimate, the fund pays the injured worker's medical bills (lifetime) and disability benefits. Once an injured worker's claim has been resolved, the fund's attorneys attempt to recoup whatever they can from the uninsured employer by way of repayment agreement or collection action. The fund also seeks recovery from any negligent third parties that caused the employee's injuries.

All Uninsured Employers' Fund cases originate at the Department of Workers' Claims. However, the fund's cases routinely end up before the Kentucky Court of Appeals and/or the Kentucky Supreme Court. The Supreme Court recently ruled the concept of "up-the-ladder" liability extends to the relationship between franchisors and franchisees. That ruling will save the fund countless thousands of dollars going forward.

## Fiscal Year 2009-2010

- ▲ Opened 150 cases
- ▲ Closed 102 cases
- ▲ 317 active cases in litigation

From July 1, 2009 to June 30, 2010 UEF paid out \$2,390,906 in income benefits and \$2,257,168 in medical benefits to injured workers in Kentucky. In total, UEF paid out \$4,648,075 in Fiscal Year 2009. UEF was able to recoup \$251,685 of that total.

## Fiscal Year 2010-2011

- ▲ Opened 134 cases
- ▲ Closed 123 cases
- ▲ 247 cases in active litigation

From July 1, 2010 to June 30, 2011, UEF paid out \$2,919,232 in income benefits and \$2,757,033 in medical benefits to injured workers in Kentucky. The total UEF distribution for Fiscal Year 2010 was \$5,676,265. UEF was able to recoup \$206,693 of that total.



# Department of Criminal Investigations

The Department of Criminal Investigations (DCI), formerly the Kentucky Bureau of Investigations (KBI), is the investigative arm of the Office of the Attorney General. In June 2008, facing unprecedented budget cuts, Attorney General Conway streamlined priority operations in his office to better address today's many modern law enforcement challenges. In this effort, General Conway created the DCI, following through on a commitment he made to Kentuckians to create a Cybercrimes Unit and dedicated more resources to combating the scourge of prescription drug abuse in Kentucky.



The DCI provides expert criminal investigative services in the areas of Cybercrimes, Drug Investigations and Public Integrity/Special Investigations. DCI investigators are sworn law enforcement officers and are certified by Kentucky Peace Officer Professional Standards. Currently, the Office of the Attorney General has 30 sworn investigators. The DCI has also handled 2,027 constituent calls received via phone, U.S. mail or email.

## Cybercrimes Branch

### Cracking Down on Internet Predators and Child Pornographers

Attorney General Conway's Cybercrimes Unit marked its third anniversary in 2011. General Conway created the unit in 2008 to increase investigations into crimes that occur online, particularly Internet predators who target children. The Cybercrimes Unit, a member of the Internet Crimes Against Children Task Force (ICAC), has made significant progress in making the Internet a safer place for Kentucky kids. The unit has seized more than 247,750 child pornographic images from the Internet this biennium.

Over the past two years, Attorney General Conway's digital forensics lab has provided a crucial service to law enforcement across the Commonwealth. Eighty percent of crimes today involve some type of digital evidence, like cell phones and cameras. Previously, police and prosecutors could wait for up to a year for evidence to be processed. With the Attorney General's digital forensics lab, hard drives and other vital digital evidence can be turned around in about a week reducing the backlog of evidence.

Additionally, the Cybercrimes Unit trained more than 2,400 law enforcement officers and prosecutors on the latest techniques in fighting cybercrimes and data collection. The Attorney General's Office also works with the National Center for Missing and Exploited Children (NCMEC) to match the contraband images and videos that the OAG has seized with known victims identified by NCMEC.

### Biennial accomplishments

<b>Child porn images seized.....</b>	<b>247,750</b>
<b>Cases opened .....</b>	<b>152</b>
<b>Cases closed.....</b>	<b>102</b>
<b>Search warrants executed.....</b>	<b>81</b>
<b>Arrests .....</b>	<b>30</b>
<b>Convictions.....</b>	<b>69</b>
<b>Hard drives examined .....</b>	<b>469</b>
<b>Removable devices.....</b>	<b>3,151</b>
<b>Media examined (gigabytes) .....</b>	<b>78,590</b>
<b>Outside agency assists .....</b>	<b>71</b>

## Cases of Interest

**Joshua Thompson** — This individual was identified as sharing/distributing child pornography images and OAG investigators executed a search warrant at his residence. Forensic examination of the computers seized from his home identified more than 90,000 photos and videos containing depictions of abused children. Thompson pled guilty in Federal Court.

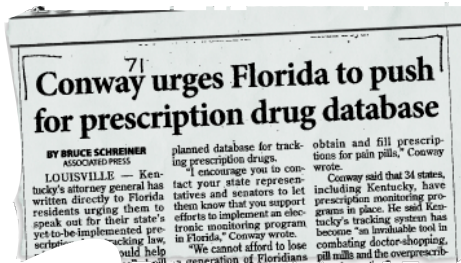
**James Hill** — Utilizing peer-to-peer file sharing, General Conway's Cybercrimes Unit identified a computer in Marshall County that contained suspected child pornography. A search warrant executed at the residence of James Hill identified more than 87,000 contraband files and videos on a computer at Hill's home.



**Dale Chisena** — An undercover chat investigation by the Cybercrimes Unit resulted in a retired Florida elementary school teacher flying from Orlando, Fla. to Lexington, Ky. to engage in sexual activity with, what he thought, were two young girls, ages 9 and 11. Chisena, who had previously been arrested for child pornography, was arrested by General Conway's Cybercrimes investigators at Bluegrass Airport. He is currently in federal custody awaiting trial.

## Drug Investigations Branch

The DCI Drug Investigations Branch is tasked with helping combat illegal drug abuse in Kentucky communities. One of Attorney General Conway's top priorities is fighting the scourge of prescription drug abuse—a problem that has devastated families in every corner of the Commonwealth.



General Conway has taken a multi-faceted approach to dealing with the problem, including increased investigative efforts, a statewide public education and awareness campaign in middle and high schools, continued partnerships with state and federal law enforcement agencies and he has worked with fellow attorneys general to stop the flow of illicit pills into Kentucky, particularly from Florida.

## AG Conway Launches Statewide Prescription Drug Task Force

In August of 2009, Attorney General Conway launched Kentucky's first and only statewide Prescription Drug Diversion Task Force to increase investigations into illegal prescription drug trafficking, overprescribing physicians, doctor shopping and illegal out-of-state pharmacies. The Task Force has investigators from eight local police agencies that are currently assisting the Office of the Attorney General.

The task force has participated in 14 drug round-ups, including Operation Flamingo Road, Kentucky's largest prescription drug bust that resulted in felony arrest warrants for more than

### Biennial Accomplishments

<b>Investigations Opened .....</b>	<b>146</b>
<b>Investigations Closed .....</b>	<b>103</b>
<b>Indictments .....</b>	<b>46</b>
<b>Arrests .....</b>	<b>54</b>



500 people. Additionally, the task force has trained 528 local law enforcement, prosecutors and healthcare professionals.

### Case of Interest

**Dr. Richard W. Albert** — The OAG Drug Investigations Branch began investigating Dr. Richard W. Albert in 2009. Dr. Albert was a physician at a pain clinic in Paintsville, Ky. Through undercover and confidential source investigations, OAG investigators were able to determine that Dr. Albert was prescribing large amounts of controlled substances with little or no examination. It is estimated that Dr. Albert prescribed approximately 105,000 pills a month and averaged 55 patients per day, charging each patient \$200 per office visit. With assistance from Paintsville Police and the DEA, OAG investigators executed five federal search warrants and served 21 federal seizure warrants. The seizure warrants resulted in the seizure of \$539,681.

Subsequent to the biennial, Dr. Albert was indicted by a federal grand jury for conspiracy to distribute and dispense measurable quantities of Schedule II controlled substances without a legitimate medical purpose and outside the usual course of professional practice. He pled guilty. Additional indictments are expected.

## Keep Kentucky Kids Safe

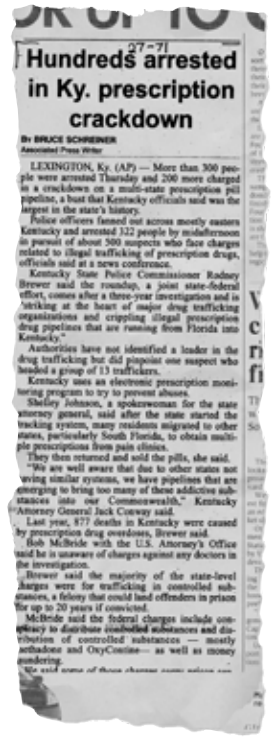


In the fall of 2010, Attorney General Conway launched a statewide prescription drug abuse prevention and education initiative called Keep Kentucky Kids Safe. In partnership with the Kentucky Justice Cabinet and its Office of Drug Control Policy, Kentucky Pharmacists Association, Operation UNITE, NADDI and concerned moms, Dr. Karen Shay and Lynn Kissick of Morehead, Ky., General Conway travels across the Commonwealth to alert middle and high school students to the dangers of abusing prescription drugs.

In just one year, General Conway and his partners have reached more than 7,000 students in more than a dozen Kentucky counties.

As part of the effort, students also have the opportunity to participate in an annual video public service announcement (PSA) competition on the perils of prescription drug abuse. For more information on the Keep Kentucky Kids Safe program, please visit <http://ag.ky.gov/rxabuse>.

General Conway also encourages parents to lock-up and monitor prescription medications in the home and safely dispose of unneeded pills through prescription take-back events sponsored by the DEA and local law enforcement.



# Public Integrity/Special Investigations Branch

The Public Integrity/Special Investigations Branch conducts investigations regarding allegations of corruption by state and local public officials. The duty of this branch is to ensure that leaders and government employees across the Commonwealth execute their duties in both an ethical and honest manner. The branch investigates numerous areas of corruption; including executive, judicial, legislative, vendor contract, law enforcement and regulatory corruption. The branch is also instrumental in investigating allegations of voter fraud. When federal violations are identified, the unit works jointly with the appropriate agency and the U.S. Attorney’s office in addressing those violations. The branch also conducts investigations for other state agencies as requested.

## Biennial Accomplishments

Investigations opened.....	106
Cases closed.....	66
Indictments obtained .....	32

## Cases of Interest

### Bluegrass Airport Investigation

General Conway’s Special Investigations branch launched an investigation of the Bluegrass Airport after an audit conducted by the Auditor of Public Accounts Office reflected the possible improper use of public funds. More than \$500,000 in questionable expenses were identified between January 2006 and March 2008. These funds were accessed by the use of credit cards issued to members of the executive staff of the Bluegrass Airport. The investigation resulted in the indictments of airport executive director Mike Gobb, deputy director John Rhodes and two former deputy directors, John Slone and John Coon. All pled guilty in 2010 in Fayette Circuit Court.

### Golden Years Rest Home

A nearly seven-month investigation by General Conway’s Department of Crimi-

nal Investigations resulted in the arrest and indictment of James Tackett, the owner and administrator for Golden Years Rest Home in Jenkins, Ky., on charges he stole federal and state funds totaling nearly \$300,000. Tackett was accused of failing to give federal stimulus checks to 33 residents of Golden Years, a personal care home. Prosecution of the case was handled by General Conway’s Office of Special Prosecutions.

On April 8, 2010, a Letcher County Grand Jury indicted James Tackett on 68 Counts of theft by failure to make required disposition; 5 counts of knowing exploitation of an adult over \$300 and one count of theft by deception. On November 1, 2011, after this biennial period, Tackett pled guilty to charges of theft, exploitation of a vulnerable adult and income tax fraud. Tackett faces a penalty of up to 10 years in prison on the state charges. Sentencing is

set for February 23, 2012.

### Eastern Livestock

The Attorney General’s Office worked with the Kentucky Agriculture Department, U.S. Department of Agriculture, U.S. Postal Inspection Service, FBI and U.S. Attorney’s Office (Western District of Kentucky), to determine whether Eastern Livestock Company broke any state laws in connection with its failure to pay producers, many of them Kentuckians, for up to \$130 million of livestock it had purchased. The Attorney General’s investigation resulted in a multi-count indictment of four people in connection with a check-kiting scheme that resulted in a loss of more than \$840,000 by 172 Kentucky cattle producers. The indictments were handed down in September of 2011 following this biennial period.

# Office of Special Prosecutions

The Office of Special Prosecutions (OSP) prosecutes criminal cases pursuant to KRS 15.190 to KRS 15.715. This includes assisting local prosecutors in complex or sensitive areas, handling cases in which the local prosecutor disqualifies himself because of a conflict of interest, and prosecuting thefts affecting the treasury of the Commonwealth. The office also investigates and prosecutes election law violations, environmental crimes and ethics law violations as referred by the Executive Branch Ethics Commission.

## Biennial Accomplishments

- ▲ Increased criminal court appearances by 52% from 207 to 315
- ▲ Increased new criminal cases opened by 5% from 63 to 66
- ▲ Closed 71 pending criminal cases
- ▲ Experienced an average workload increase of approximately 50% in criminal court work

OSP handled the preparation, issuance and return of 117 administrative subpoenas, primarily related to the Attorney General's Cybercrimes investigations. This was a new function added to Special Prosecutions this biennium.

Additionally, OSP handles general complaints and questions about the criminal justice and prosecutorial system statewide. These calls range from requests for assistance by local prosecutors to complaints by members of the public. During FY09 and FY10, 330 complaints and inquiries were handled by OSP staff.

## Combating Election Fraud and Public Corruption

Special Prosecutions also coordinates election monitoring with the Board of Elections, FBI and Kentucky State Police. From various sources, including the Attorney General's Election Fraud Hotline (1-800-328-VOTE), 698 complaints and other matters related to elections were handled during FY09 and FY10. This represents a 28 percent increase in such matters from the previous biennium. Of these, 55 percent, or 388, related to the general election of 2010.

Since at least August of 2008, the Office of Special Prosecutions has been part of a task force with the Kentucky Auditor of Public Accounts and other law enforcement agencies addressing financial public corruption by state and local officials. OSP attorneys have also made presentations on criminal law and procedure to the following:

- ▲ Kentucky Prosecutors Annual Conference
- ▲ Kentucky Prosecutors Institute (training for new prosecutors)
- ▲ Capital Litigation Training Seminar (Prosecutor's Advisory Council)
- ▲ University of Kentucky Summer Series on Aging
- ▲ Lake Cumberland Area Business Association Fraud Prevention Symposium
- ▲ Kentucky Protecting Vulnerable Adults Summit
- ▲ Kentucky Credit Union League





## Notable Cases

**Commonwealth v. Shirley Lewis** (Lewis Circuit Court) (public corruption, county financial administration) — The defendant was the elected County Clerk of Lewis County, convicted of theft by failure to make required disposition, willfully filing false tax returns, and official misconduct first degree, in connection with embezzling more than \$70,000 in local government funds over a 10-year period. This case was developed in connection with the work of the offices of Kentucky Department of Revenue and the Auditor of Public Accounts.

**Commonwealth v. Hazel Martin & Iris Hodge** (Hardin Circuit Court) (exploitation of vulnerable adults) — The defendants were convicted in connection with a scheme to exploit an elderly disabled Clinton County resident over the course of nine months, taking approximately \$90,000 in money and property. All stolen funds are expected to be restored in full by sentencing. This was investigated by OAG investigators with assistance by Kentucky Adult Protective Services.



**Commonwealth v. Mark Rapone** (Marshall Circuit Court) (rape first degree, child under 12) — OSP took over this case at the request of local officials after the resignation of the Commonwealth's Attorney. Rapone was convicted at trial of the rape of a four-year-old child. Upon presentation of his criminal history, the jury recommended the maximum sentence of life imprisonment without possibility of parole for 25 years.

**Commonwealth v. Whitaker** (Franklin Circuit Court) (tampering with public records) — Betty Whitaker, a state mine safety analyst admitted that she falsified 28 reports on 12 different mines between October 2007 and December 2008, falsely claiming that she had made observations and spoken with miners about proper safety procedures. OAG investigators and prosecutors reviewed each individual falsified report to determine that no actual safety violations may have occurred as a result of the defendant's actions. She was indicted on June 30, 2010, and pleaded to a five-year probated sentence, together with a fine of \$3,500 and investigative costs of \$8,200. As part of her plea, Whitaker retained her right to appeal the ruling of the Franklin Circuit Court, holding that she was eligible to also be criminally prosecuted despite the fact that the Executive Ethics Commission had imposed a small civil fine on her before her indictment under the same facts.

**Commonwealth v. Walter N. Creekmore, et al.** (Pulaski Circuit Court) (bribery) — Defendants Walter Creekmore, Darmus Dalton, Virginia Carol Hampton, Noble Hampton, and Everett Hyden were charged with bribery of a public official in connection with an attempt to pay Eddie Montgomery, Commonwealth's Attorney for the 28th Judicial Circuit, \$20,000 to help release Ms. Hampton's son, Brandon Compton, from prison. Compton was serving time for a drug-trafficking conviction. Mr. Montgomery immediately reported the offer to the Somerset Police, who set up a sting operation to net the other conspirators. Of the five, four gave statements implicating themselves. OSP obtained indictments on all defendants on July 7, 2010. Mr. Hampton died during the pendency of the prosecution, but Everett Hyden and Walter Creekmore have both entered guilty pleas and were sentenced to seven years probated for five years, \$4,000 fines, and an agreement to cooperate. Darmus Dalton and Ms. Hampton's cases are still pending trial.

# Office of Victims Advocacy

The Office of Victims Advocacy (OVA) works to ensure justice and healing for Kentucky's crime victims, to assist victims in navigating the sometimes complicated legal process, and to implement strategies to reduce the number of crime victims in the future.

Pursuant to KRS 421.500, also known as the Crime Victims Bill of Rights of 1986, the Office of Victims Advocacy works to ensure that the Commonwealth's crime victims are treated with respect and dignity as their cases proceed through an often complicated criminal justice system. The OVA provides advocates to serve victims in cases that have been referred to the Office of the Attorney General for prosecution, administers the Appellate Notification Program and provides technical assistance to victim advocates and prosecutors across the Commonwealth.

The OVA also staffs the Crime Victim Information Line, a toll-free telephone line (800-372-2551) available to crime victims statewide.

## Biennial Achievements

- ▲ Despite unprecedented budget cuts, Attorney General Conway has remained committed to helping victim advocates and victim advocacy programs across the Commonwealth.
- ▲ In Fiscal Year 2010, OVA notified 1,372 crime victims that their cases had been appealed through the Appellate Notification Program.
- ▲ For the Fiscal Year ending June 30, 2011, an additional 1,130 victims were given similar notification.
- ▲ Through the Victim Information Hotline, OVA answered 3,513 calls in fiscal year 2010 and 4,364 as of August of 2011.

## Training and Continuing Education

Each year, OVA provides free training and continuing education to victim service professionals during the "Victim Assistance Conference." Due to budget constraints in 2010, a one-day training was held in Frankfort, Ky. In 2011, OVA returned to a two-day conference format. More than 300 victim advocates and allied professionals received training during each of those years.

## Giving a Voice to Kentucky's Crime Victims

General Conway's Office of Victims Advocacy is committed to honoring victims of crime and their families by hosting the annual Kentucky Crime Victims' Rights Day Rally. To mark the 20th anniversary of Victims' Rights Day in Kentucky, the 2011 Victims' Rights Day event was held at the Thomas D. Clark Center for Kentucky History and featured nationally recognized victims' rights advocate Quincy Lucas.

Lucas founded Witney's Lights, Inc., a non-profit organization devoted to raising awareness about domestic violence. Witney's Lights honors the memory of Lucas' sister, Dr. Witney Holland Rose, who was murdered in 2003 at the hands of a former boyfriend in Baltimore, Md. Lucas provided a touching message around the theme "Reshaping the Future; Honoring the Past." More than 325 people attended the rally.



## Preventing Child Sexual Abuse

In FY 2010 and FY 2011 the OVA received a two-year Children's Justice Act Grant totaling \$110,000 administered by the Department for Community Based Services in the Cabinet for Health and Family Services. The grant funded two-day advanced training sessions to law enforcement, cabinet social workers and prosecutors on the interviewing, investigation and prosecution of child sexual abuse cases.

The Child Interview Approaches Program was accredited for continuing education credit by the Kentucky Board of Social Work, the Kentucky Law Enforcement Commission and the Kentucky Bar Association. During this biennium, more than 150 officers and social service workers received training. Additionally, funding from this grant provided training to approximately 350 prosecutors on best practices in advocating for victims of child sexual abuse.

The OVA provides staff and support to the Kentucky Multidisciplinary Commission on Child Sexual Abuse as well as the Child Sexual Abuse and Exploitation Prevention Board, which administers the Child Victims Trust Fund.

The Kentucky Multidisciplinary Commission on Child Sexual Abuse develops and approves protocols for investigating and prosecuting child sexual abuse to local multidisciplinary teams (MDTs) that operate pursuant to KRS 431.600. The commission further supports local MDTs by advising the local teams, collecting data on child sexual abuse cases, and reviewing complaints and making appropriate recommendations.

The Child Sexual Abuse and Exploitation Prevention (CSAEP) Board is an autonomous agency of the Office of the Attorney General that administers the Child Victims' Trust Fund (CVTF). The mission of the CSAEP Board is to help provide for the safety of Kentucky's children by preventing child sexual abuse and exploitation through educating the public, funding innovative programs, and shaping public policy. The CVTF provides funding to local communities for child sexual prevention programs and to state designated Children's Advocacy Centers for reimbursement of a portion of the expenses associated with child sexual abuse medical exams.

## New "I Care About Kids" License Plate

In April of 2011, General Conway and the CSAEP Board announced the availability of a newly designed "I Care About Kids" license plate in Kentucky. The sale of the license plates, sponsored by the CSAEP Board, generates revenue for the CVTF to assist in funding child sexual abuse prevention programs and to help offset the portion of child sexual abuse medical exam expenses not covered by private insurance or Medicaid.



The CSAEP Board awarded \$98,100 in fiscal year 2010 and \$134,195 in fiscal year 2011 to fund regional and statewide initiatives for the prevention and awareness of child sexual abuse. The board also reimburses the 15 state designated child advocacy centers for sexual assault exams and administrative costs. The board designated \$101,100 in Fiscal Year 2010 and \$87,750 in Fiscal Year 2011 for exam reimbursements from the CVTF.



# Office of Criminal Appeals

The Office of Criminal Appeals fulfills the legislative mandate (KRS 15.020) that the Attorney General appear for the Commonwealth in all criminal appeals in which the Commonwealth has an interest, in both state and federal courts. The office advises local prosecutors on legal and trial issues, assists in prosecutor training and assists in trials and post-conviction hearings at the request of the local prosecutor or the OAG Office of Special Prosecution. Criminal Appeals also reviews the merits of appeals, requests certification by prosecutors and participates in amicus curia efforts by other states.

## Criminal Appeals Biennial Stats

In Fiscal Year 2010, the Office of Criminal Appeals was assigned 541 new state court appeals, addressing 1,595 issues and containing 2,891 videotaped court records. The attorneys wrote 651 briefs, which included 2,078 issues in all courts. Incorporated therein were nine separate briefs with 18 issues before the United States Supreme Court.

Attorneys for Criminal Appeals appeared in 31 oral arguments in cases involving 74 issues before both the Kentucky Supreme Court and the Kentucky Court of Appeals.

Criminal Appeals also responded to 92 requests for assistance from prosecutors in both trial work and post-conviction matters.



## Biennial Accomplishments/Case Highlights

### Cases before the United States Supreme Court

- ▲ In *Padilla v. Kentucky*, the court held oral arguments and ruled misadvice on immigration consequences of a plea agreement may amount to ineffective assistance of counsel under the Sixth Amendment.
- ▲ In *Kentucky V. King*, the court held oral argument and ruled in Kentucky's favor that police did not violate the Fourth Amendment when they entered a home under exigent circumstances.
- ▲ In *Kentucky V. Valasquez*, the court granted certiorari and summarily reversed the Kentucky Court.

### Other Case Highlights

- ▲ Successfully argued that Michael Carneal was not entitled to federal habeas review.
- ▲ Successfully defended a county's right to protect public safety by requiring signs on slow-moving vehicles.
- ▲ Successfully defended the capital sentences of Shawn Windsor, Parramore Sanborn, Benny Hodge, Sammy Fields and Brian Moore.
- ▲ Defended the constitutionality of the death penalty in Kenton Circuit Court.
- ▲ Defended the capital sentence of Gregory Wilson (outcome pending).

## Presentations and Trainings by Criminal Appeals Director/Staff

- ▲ Four Assistant Attorneys General provided training for the Kentucky Prosecutors Conference.
- ▲ Led two federally funded Capital Case Litigation Conferences, providing training to approximately 60 prosecutors from across Kentucky.
- ▲ Presented before incoming law students at the University of Kentucky.
- ▲ Updated the Kentucky Post-Conviction Manual.
- ▲ Helped develop Kentucky law by being active in the Criminal Rules Committee, Appellate Rules Ad Hoc Committee and KBA's Appellate Section.

### 2009

### 2010

### 2011

BRIEFS:	FILED	ISSUES	BRIEFS:	FILED	ISSUES	BRIEFS:	FILED	ISSUES
State Circuit Court	32	78	State Circuit Court	62	81	State Circuit Court	17	50
Kentucky Court of Appeals	205	631	Kentucky Court of Appeals	281	900	Kentucky Court of Appeals	239	623
KYCA post-conviction collateral attacks (i.e. RCr 11.42)	139	434	KYCA post-conviction collateral attacks (i.e. RCr 11.42)	205	776	KYCA post-conviction collateral attacks (i.e. RCr 11.42)	177	460
Kentucky Supreme Court	137	764	Kentucky Supreme Court	165	1018	Kentucky Supreme Court	140	557
U.S. District Court	48	94	U.S. District Court	86	168	U.S. District Court	54	326
U.S. Court of Appeals, 6Cir.	16	42	U.S. Court of Appeals, 6Cir.	13	37	U.S. Court of Appeals, 6Cir.	15	44
U.S. Supreme Court	8	17	U.S. Supreme Court	7	29	U.S. Supreme Court	9	18
TOTAL:	585	2060	TOTAL:	819	3009	TOTAL:	651	2078
**ORAL ARGUMENTS	69	171	**ORAL ARGUMENTS	68	251	**ORAL ARGUMENTS	31	74
**STATE COURT HEARINGS	14		**STATE COURT HEARINGS	69		**STATE COURT HEARINGS	33	
**PROSECUTOR CONTACTS	125		**PROSECUTOR CONTACTS	205		**PROSECUTOR CONTACTS	70	
**PROSECUTOR RESEARCH	77		**PROSECUTOR RESEARCH	127		**PROSECUTOR RESEARCH	22	
NEW CASES 2008			NEW CASES 2009			NEW CASES 2010		
BASED ON AVG. MANPOWER OF: 25 ATTORNEYS AND 9 SUPPORT STAFF			BASED ON AVG. MANPOWER OF: 25 ATTORNEYS AND 7 SUPPORT STAFF			BASED ON AVG. MANPOWER OF: 25 ATTORNEYS AND 7 SUPPORT STAFF		

**\*\*NOTE:** Only denotes number of times in a year this action was performed. Does not in any way reflect the number of hours spent completing these actions.

# Prosecutors Advisory Council

The Prosecutors Advisory Council (PAC) administers the budget of the Unified Prosecutorial System and oversees the training of the Commonwealth's prosecutors. The nine-member council is appointed by the Governor and includes the Attorney General, three Commonwealth's Attorneys, three County Attorneys and two citizen members. Attorney General Conway serves as chairman of the council.

PAC presides over the financial administration of the Unified Prosecutorial System, which consists of 177 Commonwealth's and County Attorneys and their employees. The eight-member administrative staff prepares the budget for the 177 locally elected prosecutor's offices and develops and coordinates statutorily mandated training regarding elder abuse, child sexual abuse and domestic violence.

The PAC staff provides personnel, payroll and fringe benefit services for more than 1,100 employees of the Unified Prosecutorial System (UPS), provides legal research and guidance to the state's elected prosecutors and their staffs and administers more than 30 local, state and federal grants including the oversight and reporting requirements of the \$3.9 million American Recovery and Reinvestment Act (ARRA) grant to enhance and expand the eWarrant system in Kentucky's rural counties.

The council also oversees the preparation of the Child Sexual Abuse Prosecution Manual and the Data Collection Report.



*James Crawford and Linda Tally Smith, 2010 Outstanding Commonwealth's Attorneys.*

PAC and the Office of the Attorney General co-sponsor the annual Kentucky Prosecutors Conference, which is attended by nearly 700 prosecutors and law enforcement officials from across Kentucky. The council provides basic training courses for newly elected Commonwealth's and County Attorneys and sponsors the Kentucky Prosecutors Institute, a week-long trial skills course for new prosecutors. Due to budget constraints, it is still uncertain if PAC will be able to host the Kentucky Prosecutors Institute during FY2012.

## Biennial Achievements

During this biennium, Kentucky's prosecutors have continued to represent the Commonwealth of Kentucky in combating crime despite continued funding challenges following the worst fiscal crisis in the history of the Unified Prosecutorial System in Fiscal Year 2009.

In Fiscal Year 2011, Kentucky's prosecutors received 1.5 percent less than in the previous Fiscal Year. The economic challenges will continue into Fiscal Year 2012, with prosecutors facing a 2.5 percent funding cut. As a result, there have been no staff salary increases, supply, travel and postage budgets have been cut or eliminated and court reporter budgets have been eliminated for all the offices of the 177 County and Commonwealth's Attorneys. Additionally, expert witness budgets have been cut and operating budgets of the County Attorneys have been completely eliminated.

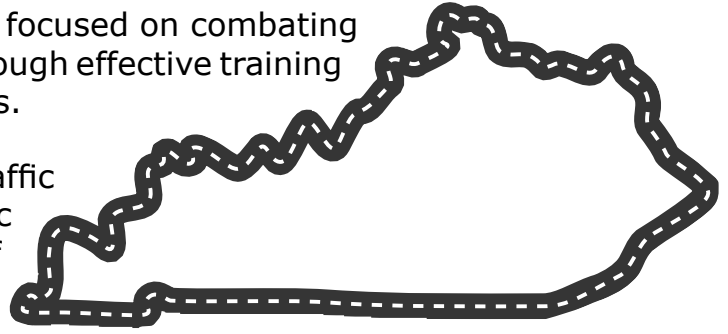




## Protecting Public Safety

PAC and the Office of the Attorney General remain focused on combating drunken driving and protecting the public safety through effective training of prosecutors in DUI and vehicular homicide cases.

During this biennium, the National Highway Traffic Safety Administration continued to fund a Traffic Safety Resource Prosecutor (TSRP) in the Office of the Attorney General.



The grant is administered through the Governor's Highway Safety Program and has funded multiple regional trainings across the state.

The TSRP trains County and Commonwealth's Attorneys as well as law enforcement in the effective prosecution and handling of DUI and impaired driving cases.

The Attorney General's TSRP, Bob Stokes, conducted four "Protecting Lives, Saving Futures" regional training sessions this biennium, as well as two vehicular homicide sessions entitled "Lethal Weapon."



Attorney General Conway with Dr. Karen Shay & Lynn Kissick, concerned parents and partners in the fight against prescription drug abuse.



Attorney General Conway at a Prescription Drug Take-back event in Louisville.

# Attorney General Conway Brings eWarrants to Kentucky's Rural Counties

The Attorney General's eWarrants Rural County Implementation Project in conjunction with the Prosecutors Advisory Council has made great strides in providing access to the electronic warrant management system (eWarrants) in Kentucky's rural counties during the 2009- 2011 biennium.

The eWarrants system was created to address a backlog of nearly 300,000 un-served warrants in Kentucky. Service rates for warrants rise from as low as 10 percent under the old paper-based system to roughly 50 percent immediately after implementation of eWarrants, and as high as 80 percent over the long-term.

In September 2009, the U.S. Department of Justice's Bureau of Justice Assistance awarded Attorney General Conway \$3.92 million from the American Recovery and Reinvestment Act to implement eWarrants and offer necessary equipment and training to County Attorneys and law enforcement agencies in up to 100 of Kentucky's rural counties, or counties with fewer than 50,000 residents, by December 31, 2011.

Subsequent to this biennial period, General Conway's office successfully implemented eWarrants in 99 rural counties under the ARRA grant, bringing the total number of Kentucky counties utilizing eWarrants to 115 as of December of 2011.



## Biennial Accomplishments

- ▲ Attorney General's office implemented eWarrants in 68 Kentucky counties at no cost to local communities.
- ▲ Provided more than \$50,000 in grant-funded equipment to County Attorneys' offices.
- ▲ Trained more than 85 prosecutors, judges, clerks and law enforcement officers on eWarrants system.
- ▲ ARRA grant created 16 jobs for citizens of the Commonwealth

The Office of the Attorney General participates on the eWarrants Statewide Accountability Team, which also includes representatives from Kentucky State Police (KSP), Administrative Office of the Courts (AOC), the Kentucky Office of Homeland Security, and Open Portal Solutions, Inc., the developer of the eWarrants software. Maintaining these strategic partnerships and ensuring the sustainability of the eWarrants system are continuing goals of the Attorney General's grant.

Individuals may obtain more information about eWarrants by filling out the eWarrant contact form on the Attorney General's website at <http://ag.ky.gov/ewarrants> or visit <http://homelandsecurity.ky.gov>.

# Office of Administrative Services

The Office of Administrative Services (OAS) is responsible for the fiscal, personnel and technology tasks of the Office of the Attorney General. Larry Clarke, executive director of OAS, has worked for the Office of the Attorney General since May of 2011.

OAS offers assistance to each part of the agency in areas relating to development and implementation of budget; asset management, accounts payable, customer billing and general accounting; cost allocation and grant administration; purchasing and contract administration; and records retention and records destruction guidelines.

Personnel management functions provided by OAS include personnel, payroll and benefits administration; Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964 and Americans with Disabilities Act compliance. OAS also provides guidance to every division related to these functions.

OAS oversees the Attorney General's Information Technology Branch. This branch is responsible for maintaining the computer network, personal computers and software development.





## Michael Louis Harned

*November 30, 1959 - October 1, 2010*

Mike Harned, 50, was a tremendous asset to the Attorney General's Office of Criminal Appeals from his hiring in 1986 until his passing in 2010. Mike was appointed a branch manager in 1995 and was an Assistant Attorney General at the time of his death.

Mike received his undergraduate degree in Communications from the University of Kentucky in 1981 and a law degree from the University of Louisville in 1985. Prior to his work at the Attorney General's Office, Mike served as a staff attorney for Kentucky Supreme Court Justice Charles Leibson.

Mike is survived by his wife, Colleen, and son, William. His sense of humor, love of practical jokes, his willingness to mentor new staff attorneys and his commitment to public service will not soon be forgotten.



## Kim Lou Haydon Furnish

*November 6, 1959 – February 17, 2011*



Kim Furnish, 51, retired from the Office of the Attorney General in August of 2008 after having served as the Assistant Director of the Prosecutor's Advisory Council (PAC). A valued member of PAC since 1990, Kim was responsible for overseeing PAC staff and daily operations.

Kim was well-known throughout Kentucky's Unified Prosecutorial System and is remembered for her kindness, concern for others and dedication to assisting Commonwealth's and County Attorneys across Kentucky.

A native of Owenton, Ky., Kim was active in her community — serving as a member of the Owen County Homemakers and teaching Sunday school at Mt. Pleasant Baptist Church. Following her retirement from state government, Kim worked as an administrative assistant at New Horizons Medical Center in Owen County.

Kim is survived by her husband, David, her mother, Linda Haydon, and a nephew, Austin Spenneberg.



The OAG does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or in the provision of services and provides upon request, reasonable accommodation necessary to afford all individuals with disabilities an equal opportunity to participate in all programs and activities.

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